

Message Text

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DRAFTED BY L/NEA:JAROHWER:DSC
APPROVED BY NEA/ARP:FMDICKMAN
L/PM:JHMICHEL
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FM SECSTATE WASHDC

TO AMEMBASSY JIDDA

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E.O. 11652: N/A

TAGS: MASS, SA, US

SUBJECT: SAUDI BAN ON COMMISSION PAYMENTS

REF: JIDDA 6441

1. DECREE QUOTED REFTL IS AMBIGUOUS IN SOME IMPORTANT POINTS BUT WE ASSUME IT APPLIES TO BOTH SANG AND MODA. REQUEST YOU SEEK CLARIFICATION OF POINTS IN PARA 2 BELOW FROM MOST AUTHORITATIVE SAG SOURCE AVAILABLE.

2.A. IS THE DECREE PURELY PROSPECTIVE? WOULD IT PROHIBIT PAYMENT OF COMMISSIONS NOW OWED ON CONTRACTS FOR PAST SALES BUT NOT YET PAID (E.G. PEACE HAWK IV)? (SEE FIRST SENTENCE IN "ARTICLE" 2).

B. DOES VOIDING OF COMMISSION ARRANGEMENT FOR SAG (SEE SECOND SENTENCE "ARTICLE" 1) ALSO VOID ARRANGEMENT AS LIMITED OFFICIAL USE

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BETWEEN AGENT AND CONTRACTING FIRM?

C. ARE PAYMENTS FROM COMPANY'S PROFITS PROHIBITED AS WELL AS THOSE AT SAG COST? (SEE FIRST SENTENCE "ARTICLE" 1, AND SECOND SENTENCE "ARTICLE" 2). IF SO, WOULD FIRM PAYING SUCH COMMISSIONS BE SUBJECT TO ANY CIVIL OR CRIMINAL SANCTION UNDER SAUDI LAW?

D. WOULD AGENT TO WHOM SUCH COMMISSION IS OWED BE PROHIBITED BY SAG FROM SEEKING ENFORCEMENT OF HIS CONTRACT ELSEWHERE?

E. DOES SECOND SENTENCE "ARTICLE" 2 APPLY IF AGENT OBTAINS COURT JUDGMENT OR ARBITRATION AWARD IN U.S. DIRECTING CONTRACTOR TO PAY AGENT'S FEE CURRENTLY OWED BUT NOT YET PAYED UNDER EXISTING AGENCY ARRANGEMENT?

F. THE DECREE MENTIONS ONLY "ARMS AND EQUIPMENT" CONTRACTS. DOES IT APPLY ALSO TO CONTRACTS FOR DEFENSE SERVICES (E.G. PHASE V OF PEACE HAWK)?

3. WOULD ALSO APPRECIATE EMB CONFIRMING BY MEANS IT CONSIDERS APPROPRIATE OUR UNDERSTANDING OF FOLLOWING LESS URGENT POINTS. ARE WE CORRECT IN ASSUMING THAT:

A. THE DECREE WOULD NOT APPLY TO LAWYERS, ACCOUNTANTS, FREIGHT FORWARDERS, OR OTHER "MIDDLEMEN" WHO DO NOT SOLICIT OR SECURE BUSINESS WITH SAG FOR FOREIGN CONTRACTORS?

B. IT APPLIES TO AGENTS OF FOREIGN CONTRACTORS EVEN THOUGH THEY ARE NOT AUTHORIZED TO ENTER INTO CONTRACTS ON BEHALF OF THEIR PRINCIPALS?

C. IT DOES NOT APPLY TO FIXED-FEE AS DISTINGUISHED FROM PERCENTAGE COMMISSION AGREEMENTS?

D. THERE WOULD BE CIVIL OR CRIMINAL SANCTIONS IN SAUDI ARABIA FOR AGENTS WHO PERFORM MARKETING SERVICES AND RECEIVE COMMISSION PAYMENTS FOR THEM IN VIOLATION OF THE DECREE? KISSINGER
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